

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 10, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10MD-223

Maui

Issuance of Revocable Permit to the Pacific Whale Foundation to Utilize State Lands for a Coral Reef Naturalist Information Station at Ulua Beach, Paeha, Honuaula, Makawao, Wailea, Maui, Hawaii, Tax Map Key: (2) 2-1-008: Seaward of 088.

APPLICANT:

The Pacific Whale Foundation, a Non-Profit Corporation.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Paeha, Honuaula, situated at Wailea, Maui, Hawaii, identified by Tax Map Key: (2) 2-1-008: seaward of 088, as shown on the attached map labeled Exhibit (A) and the Overview Photo labeled Exhibit (B).

AREA:

30 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Coral Reef Naturalist Information Station purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources Division of Land Management approved and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

Refer to attached Exemption Notification labeled Exhibit (C).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Registered business name confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Applicant in good standing confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

REMARKS:

The Pacific Whale Foundation is requesting the use of approximately thirty (30) square feet of the upper portion of sand shoreline at an area commonly known as Ulua Beach. This location is frequented by both tourists from nearby hotels and resorts, along with many local residents who choose to utilize this beach because of existing amenities, which are managed by the County of Maui. These amenities include public parking, showers, and a restroom facility (in a small park like area.)

The proposed use is allowable as it does not violate any unencumbered land (HAR. 13-221) or conservation district (HRS. 183C-7) rules. Considering factors are: no structures shall be erected, no commercial activities shall being conducted and a permit for the described use has been obtained by the applicant from the County of Maui's Parks Department.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The Pacific Whale Foundation has utilized the subject area for their Coral Reef Naturalist Information Station for the past two years (January 2009, through December 2010) via an annual right-of-entry permit. The proposed use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and /or cultural resources in the area. As such, staff believes that the proposed use would not involve negligible or no expansion or change in use of the subject area beyond that previously existing. Staff has no objections to the applicant's continued use of the area as they are providing information to help educate the public on how to help protect our ocean resources.

A month-to-month tenancy is the appropriate disposition for the requested use at this time. The Pacific Whale Foundation information station consists of two folding tables, three chairs, and an umbrella that will be erected daily and completely removed at the end of the workday. The subject State land will be utilized from 7:30 a.m. through 12:30 p.m. daily.

There were no other applicants requesting the use of the subject area.

AGENCY COMMENTS:

Requests for comments were submitted to the following agencies:

Agency	Comments
County of Maui – Dept. of Parks & Recreation	No comments received.
County of Maui – Planning	No comments received.
State of Hawaii – Division of Aquatic Resources	Refer to next heading – Comments.

COMMENTS:

The Division of Aquatic Resources (DAR) provided the following comments regarding Pacific Whale Foundation's proposed use of the subject area. In an attempt to address DAR's concerns, Pacific Whale Foundation's Communications Director Anne Rillero was contacted. Ms. Rillero provided the following responses.

1. Q. Has the information station been visited unannounced?

A. Yes, the information station has been visited on several occasions to observe the use of the area and confirm the information being provided to the public is for educational purposes only.
2. Q. Although no commercial activities are supposed to be conducted, does their handing out of Pacific Whale Foundation (PWF) brochures actually promote advertising of their business locations or activities?

A. The brochures or information being provided is strictly for educational purposes. No information on PWF commercial activities are solicited or provided.
3. Q. Are their reef walks, Molokini Shoal Marine Life Conservation District snorkel, whale watches, and other activities that charge a fee being promoted?

A. No, they are not using this site to promote any of their PWF commercial activities.

No other comments were received regarding this request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to the Pacific Whale Foundation covering the subject area for Coral Reef Naturalist Information Station purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;

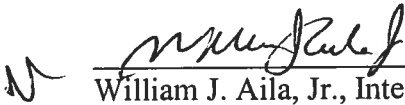
- b. Review and approval by the Department of the Attorney General;
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
- e. No structure(s) shall be erected at the subject location.
- f. No commercial business activities shall be conducted.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Interim Chairperson

Pacific Whale Foundation
PSF#10MD-223

Wailea Hotel & Beach Resort
(2) 2-1-008:067

County of Maui
(2) 2-1-008:088

Park

Restroom

Parking

Parking

Access Road

Information Station
30 sq. ft.

Wailea Elua I
(2) 2-1-008:069

Exhibit B



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

December 21, 2010

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Pacific Whale Foundation Request for a Month-to-Month Revocable Permit for a Coral Reef Naturalist Information Station Purposes.
Project / Reference No.:	PSF NO.: 10MD-223
Project Location:	Portion of Government Lands at Ulua Beach, Honuaula, Makawao, Wailea, Maui. TMK: (2) 2-1-008: Seaward of 088.
Project Description:	The applicant is requesting the use of approximately 30 sq. ft. to set up two folding tables, three chairs, and an umbrella for a Coral Reef Naturalist to provide information to the general public and beach users about the marine life and ocean resources in the area. The area will be utilized on a daily basis from 7:30 a.m. through 12:30 p.m. and all equipment will be removed from the area at the end of the workday.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description: Department of Land & Natural Resources Division of Land Management Exemption List	Exemption Class #1 That states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".
Recommendation:	It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


William J. Aila Jr., Interim Chairperson

3/1/11
Date

EXHIBIT "C"